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# Living with the Death Penalty

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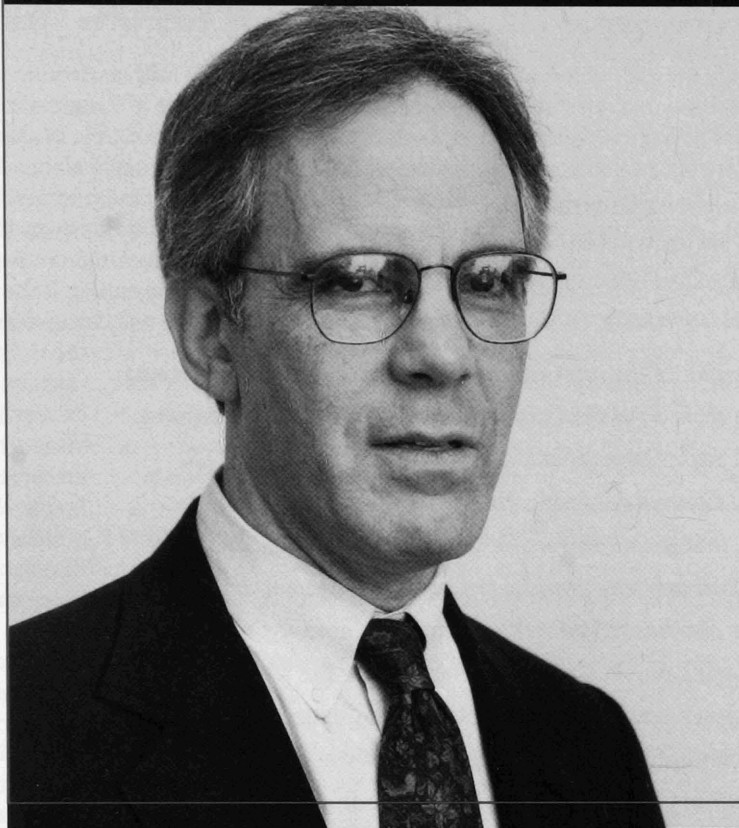
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# Living with the death penalty

By **SAMUEL R. GROSS**

The debate over the death penalty in the United States — such as it is — is framed in terms of criminal justice policy. The issues are the same ones we consider when the question is the length of prison sentence for a drug crime: Does the defendant deserve the penalty? Is it cost effective by comparison to other available sanctions? Will it deter others from committing the crimes for which he was convicted? Can we impose this punishment fairly? Can we make sure that innocent people are not condemned?

The answers to these questions are well known, and depressing. The death penalty is a very expensive punishment; although the act of killing a single person is cheap, maintaining the elaborate system of trial and review that makes these occasional killings possible is extremely costly and diverts resources from other parts of the criminal justice system. Despite its advocates' fondest hopes, the death penalty does not deter homicide any better than life imprisonment. We do not and probably cannot impose the death penalty predictably and fairly, and we have not been able to prevent an extraordinary number of convictions and death sentences for innocent defendants. And yet a great majority of Americans favor the death penalty — most strongly so — in part because they hope — despite the evidence to the contrary — that it will reduce crime, but mostly because they believe that many criminals who commit murder deserve to be killed.

In Europe, and in much of the rest of the world, the death penalty is viewed primarily as an issue of human rights. From this point of view, the question is not whether a killer like John Wayne Gracey *deserves* to die; of course he does. Surely for what Gracey did — kidnapping, humiliating, abusing, torturing, and finally killing dozens of boys and young men — he deserves far worse than a quick death. In Tudor England the punishment for treason was that the condemned man be hung by the neck, that he be cut down and disemboweled while still alive, that his entrails be burnt before him, that he be drawn and quartered (that is, torn apart), and only then, that he be beheaded and his head stuck to rot on a pike. Wouldn't that be closer to the mark? As Americans, we have no doubt that it would be wrong — that it would be a violation of

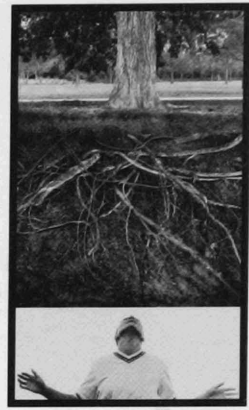
human rights — to torture Gracey as punishment for his acts of torture. For European judges and lawyers it is equally clear that it would be a violation of human rights to kill him for his acts of killing.

Drawing and quartering was not abolished out of sympathy for traitors, but as a fundamental limit on the exercise of government power. We believe that a civilized state does not torture, not even for the vilest crimes, not even if torture would deter future criminals. The abolition of capital punishment extends this logic from torture to death. It signifies that a civilized state does not deliberately and methodically kill the people it governs.

It is the policy of the United States to monitor human rights violations around the globe, and to try to stop human rights abuses by other governments. By the same token, it is the official policy of several European countries to work to abolish the death penalty worldwide, including in the United States, because it is a violation of human rights. In Europe itself, this has been accomplished primarily through the Council of Europe, which now requires abolition of capital punishment as a condition of membership. All of the European republics of the former Soviet Union — as well as the former Soviet bloc countries — are applying for or have recently been admitted to the Council of Europe. As a result, those former socialist countries that did not abolish the death penalty soon after 1989 have done so recently, or are in the process of doing so.

Abolition in the United States is a totally different matter. We are not much interested in what the world thinks of our system of criminal justice, and we have the power to ignore world opinion. And we do. To choose one example among many: In May of this year, the United Nations Human Rights Commission voted for a worldwide moratorium on executions. Only 11 countries voted in opposition, including China, Pakistan, Rwanda, Sudan — and the United States.

Some aspects of the administration of the death penalty in the United States raise separate and troublesome human rights questions. The International Covenant on Civil and Political Rights prohibits the imposition of the death penalty on defendants who were under 18 years old at the time of their crimes. Virtually every country in the world has signed this treaty, most recently China. The United States is the only nation to have done so with a reservation that excludes the article forbidding the execution of juvenile offenders. For the same reason, the United States has not ratified the UN Convention on the Rights of the



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Child, or the American Convention on Human Rights, both of which would outlaw that practice. This has enabled the United States to retain its status as the modern world leader in executing teenage criminals.

The United States has also executed over 30 mentally retarded defendants since 1976, a practice that is considered unacceptable elsewhere. Racial discrimination in the use of capital punishment is a national disgrace. The extraordinary delays in handling death penalty appeals in America — a death row inmate in California is likely to wait four years or more after judgment before a lawyer is appointed to handle his case — are considered a separate human rights violation by European countries. And the absolutely inadequate legal representation that many capital defendants receive is a human rights scandal by any measure. But the essential problem, seen from the outside, is more basic: The United States is a civilized and democratic nation, with a respected legal system, that nonetheless continues to kill people as a mode of punishment long after most similar states have abandoned that practice as inhumane, brutal, and barbaric.